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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re JAMES A., A Person Coming Under the Juvenile Court Law.	
KERN COUNTY DEPARTMENT OF HUMAN SERVICES, Plaintiff and Respondent, v. VERONICA A., Defendant and Appellant.	F041751 (Super. Ct. No. JD095381) **O P I N I O N**

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Michael G. Bush, Judge.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and Appellant.

B.C. Barmann, Sr., County Counsel, and Susan M. Gill, Deputy County Counsel, for Plaintiff and Respondent.

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* Before Vartabedian, Acting P.J., Buckley, J., and Cornell, J.

Veronica A. (aka Ronika A.) appeals from an order terminating her parental rights (Welf. & Inst. Code, § 366.26) to her son, James.[1] She contends the court should have preserved her rights and ordered a plan of legal guardianship for James with her parents. On review, we disagree and will affirm.

PROCEDURAL AND FACTUAL HISTORY

In December 2001, the Kern County Superior Court adjudged minor James, born in September 2001, a dependent child of the court and removed him from appellant's custody. The court previously determined James came within its jurisdiction under section 300, subdivision (b) because appellant's substance abuse interfered with her ability to care for the infant.

Despite six months of reasonable reunification services, appellant was unable to regain custody of James. Consequently, the court, in May 2002, terminated services and set a section 366.26 hearing to select and implement a permanent plan for James. The mother challenged the court's reasonable services finding and setting order by way of writ petition (Cal. Rules of Court, rule 39.1B) to this court. We affirmed the trial court in a written opinion on the merits.[2]

At an October 2002 section 366.26 hearing, it was undisputed that James was adoptable. In relevant part to this appeal, appellant urged the juvenile court to find termination would be detrimental to James pursuant to section 366.26, subdivision (c)(1)(D). This subdivision authorizes the court to find a "compelling reason for determining that termination would be detrimental to the child" if:

> "[t]he child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do

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1 All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

2 We mention this because appellant in her opening brief incorrectly claims otherwise.

> not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child." (§ 366.26, subd. (c)(1)(D).)

To support her detriment claim, appellant offered her mother's testimony. Respondent Kern County Department of Human Services (the Department) had placed James with his maternal grandparents for virtually his entire dependency. It was appellant's position that the Department had threatened to take James away from the grandparents if they did not adopt him.

The maternal grandmother confirmed a social worker with the Department told her that if she was unwilling to adopt James, he would most likely be removed and "taken [by an adoptive family] in a second . . . he is that nice of a kid, a wonderful child." However, the grandmother twice denied that the social worker threatened her. The witness also testified she was able and willing to adopt her grandson. To this end, she had submitted an adoption application.

However, the maternal grandmother preferred to be her grandson's legal guardian. In her view, adoption would improperly label her daughter "a bad person, a bad mother and she is not that." Instead, appellant was a person with "a difficult problem." Labeling her daughter and taking away her parental rights would not be good for James or her.

The court rejected the mother's claim, finding in the process that the grandmother was neither forced nor coerced into asking for adoption. Then, having concluded that James was adoptable, the court terminated parental rights.

DISCUSSION

Appellant chastises the juvenile court for not applying section 366.26, subdivision (c)(1)(D) ("the relative-caregiver exception") to the facts of this case. As she views the record, the only reason the grandparents are willing to adopt James is because of an implied or explicit threat by social workers to remove him from their care and place him

elsewhere. She submits that we should interpret the relative-caregiver exception to prohibit social service agencies and courts from "blackmailing" relatives into adoption when they believe the best interests of the extended family and the minor are best served by legal guardianship over adoption. Appellant indeed urges this court to issue a published decision which holds that the relative-caregiver exception gives a relative-caregiver an absolute right to choose between adoption and legal guardianship so long as it is clear his or her commitment to the minor is a permanent one.

Appellant's argument fails largely because it ignores the record in this case. It also would essentially rewrite section 366.26, subdivision (c)(1)(D). It is not within our appellate power, however, to either ignore the record or rewrite statutory law. (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 633-634; *In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319; *In re Katrina L.* (1988) 200 Cal.App.3d 1288, 1297.) Having reviewed the record and considered the language of the relative-caregiver exception, we conclude the juvenile court properly exercised its discretion in rejecting appellant's argument.

In relevant part to this appeal, the language of section 366.26, subdivision (c)(1)(D) first requires that the relative with whom the minor is living be either "unable or unwilling to adopt the child." However, the maternal grandmother was both able and willing to adopt James. Moreover, the juvenile court expressly found the grandmother was neither forced nor coerced into asking for adoption. This issue of fact was a matter for the juvenile court alone, provided it was supported by substantial evidence (*In re Amy M.* (1991) 232 Cal.App.3d 849, 859-860), and here, the court's finding was amply supported by the record. Therefore, under these circumstances, the relative-caregiver exception simply could not apply. (See *In re Zachary G.* (1999) 77 Cal.App.4th 799, 810; *In re Jose V.* (1996) 50 Cal.App.4th 1792, 1801.)

In addition, even assuming the grandmother's preference to be James's legal guardian amounted to an unwillingness to adopt (compare *In re Jose V., supra,* 50

Cal.App.4th at p. 1801), there remain additional requirements under section 366.26, subdivision (c)(1)(D), in particular that the relative's unwillingness to adopt the child be due to " exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child[.]" Appellant contends the phrase "exceptional circumstances" recognizes there are emotional issues which touch on a relative-caregiver's decision to provide a permanent home for a child and, so long as it is clear his or her commitment to the minor is a permanent one, the relative-caregiver has an absolute right to choose between adoption and legal guardianship. We disagree.

Our role in construing a statute is to ascertain the Legislature's intent so as to effectuate the purpose of the law. (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000.)[3] We consider first the words of the statute because they are generally the most reliable indicator of legislative intent. (*People v. Gardeley* (1996) 14 Cal.4th 605, 621.) We further apply the plain meaning of the actual words of the law. (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632-633.)

The word "exceptional" is by dictionary definition "of the nature of or forming an exception; out of the ordinary course, unusual, special." (Oxford English Dictionary, 2d Ed.) Thus, under the plain meaning rule of statutory construction, the Legislature mandates that a relative-caregiver's inability or unwillingness to adopt be because of some out of the ordinary, unusual or special circumstance. In this case, the grandmother believed adoption would improperly label her daughter as "bad" when she was simply a person with "a difficult problem." However, one relative's desire to protect another relative's feelings or reputation is hardly out-of-the-ordinary or unusual. Indeed, it is unfortunately all too common that dependent children require permanency planning due

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3 The few published decisions relating to section 366.26, subdivision (c)(1)(D), *In re Zachary G., supra,* 77 Cal.App.4th at page 810 and *In re Jose V., supra,* 50 Cal.App.4th at page 1801 have little to say about the "exceptional circumstances" language and its meaning.

to their parents' inability to overcome their drug dependence and that relatives are called upon to step in and provide such children with care.

Further, according to rules of statutory interpretation, significance, if possible, should be attributed to every word, phrase, sentence and part of an act, as the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230.) Given our state's strong public policy favoring termination of parental rights and adoption for adoptable dependent children who cannot safely be returned to parental custody (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310), it is difficult to imagine the Legislature in drafting section 366.26, subdivision (c)(1)(D) intended that a relative-caregiver's concern for how others might perceive the birth parent could prevent the adoption of an otherwise adoptable child.

Finally, appellant's interpretation of the relative-caregiver exception as an absolute right on the part of the relative-caregiver to choose between adoption and legal guardianship is an argument better made to the Legislature. This court has no power to rewrite the statute so as to make it conform to an intention which is not expressed. (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632-633.)

DISPOSITION

The order terminating parental rights is affirmed.